



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1191]

Certain Audio Players and Controllers, Components Thereof, and Products Containing the Same; Notice of a Commission Determination to Institute a Modification Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute a modification proceeding in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2301. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On February 11, 2020, the Commission instituted this investigation based on a complaint filed by Sonos, Inc. ("Sonos") of Santa Barbara, California. 85 FR 7783 (Feb. 11, 2020). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) ("section 337"), based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain audio players and controllers, components thereof, and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 9,195,258 ("the '258 patent"); 10,209,953 ("the '953 patent"); 8,588,949 ("the '949 patent"); 9,219,959 ("the '959 patent"); and 10,439,896 ("the '896 patent"). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation named as respondents Google LLC ("Google") and Alphabet Inc.

(“Alphabet”), both of Mountain View, California. *Id.* The Office of Unfair Import Investigations (“OUII”) was also named as a party. *Id.*

On September 21, 2020, the Commission terminated the investigation as to Alphabet based on withdrawal of the allegations in the complaint directed to Alphabet. Order No. 18 (Sept. 1, 2020), *unreviewed by* Comm’n Notice (Sept. 21, 2020). On November 24, 2020, the Commission determined that the importation requirement has been satisfied. Order No. 27 (Oct. 27, 2020), *unreviewed by* Comm’n Notice (Nov. 24, 2020). On February 2, 2021, the Commission determined that the technical prong of the domestic industry requirement has been satisfied as to the ’949 patent. Order No. 32 (Jan. 4, 2021), *unreviewed by* Comm’n Notice (Feb. 2, 2021). On February 16, 2021, the Commission determined that the economic prong of the domestic industry requirement has been satisfied as to all asserted patents. Order No. 35 (Jan. 14, 2021), *reviewed and aff’d by* Comm’n Notice (Feb. 16, 2021). On March 12, 2021, the Commission partially terminated the investigation based on withdrawal of the allegations in the complaint as to certain asserted claims. Order No. 58 (Feb. 23, 2021), *unreviewed by* Comm’n Notice (Mar. 12, 2021).

On August 13, 2021, the presiding Chief Administrative Law Judge (“CALJ”) issued an initial determination (“ID”) finding a violation of section 337 with respect to the following claims of the asserted patents: claims 17, 21, 24, and 26 of the ’258 patent; claims 7, 14, and 22-24 of the ’953 patent; claim 10 of the ’959 patent; claims 1, 2, and 5 of the ’949 patent; and claims 1, 5, 6, and 12 of the ’896 patent.

On November 19, 2021, the Commission determined to review the ID in part with respect to the ID’s analysis of whether the products accused of infringing the ’258 and ’953 patents are articles that infringe at the time of importation. 86 FR 67492 (Nov. 26, 2021). The Commission also determined to correct two typographical errors on pages 24 and 84 of the ID. *Id.* The Commission did not request briefing on any issue under review. *Id.* The Commission’s notice also requested written submissions on remedy, the public interest, and bonding. *Id.*

On January 6, 2022, the Commission terminated the investigation with a finding of a violation of section 337 with respect to claims 17, 21, 24, and 26 of the '258 patent; claims 7, 14, and 22-24 of the '953 patent; claim 10 of the '959 patent; claims 1, 2, and 5 of the '949 patent; and claims 1, 5, 6, and 12 of the '896 patent. 87 FR 1784-85 (Jan. 12, 2022). The Commission issued a limited exclusion order (“LEO”) and a cease and desist order (“CDO”) against Google. *Id.*

On January 27, 2022, Sonos filed a petition with the U.S. Court of Appeals for the Federal Circuit seeking review of the Commission’s finding that one or more redesign products that Google submitted for adjudication with respect to each asserted patent are non-infringing. *Sonos, Inc. v. Int’l Trade Comm’n*, No. 22-1421. On March 22, 2022, Google filed a petition for review of the Commission finding of violation. *Google LLC v. Int’l Trade Comm’n*, No. 22-1573. These appeals have been consolidated.

On July 14, 2022, Google filed a petition for modification of the LEO and CDO, pursuant to Commission Rule 210.76(a), 19 CFR 210.76(a). Google alleges that its Pixel smartphones, tablets, laptops, and other “controllers” installed with an allegedly new Device Utility app do not infringe any of claims 1, 5, 6, and 12 of the '896 patent. On July 25, 2022, Sonos filed an opposition to Google’s modification petition.

The Commission has determined that Google’s petition complies with the requirements for institution of a modification proceeding pursuant to Commission Rule 210.76. Accordingly, the Commission has determined to institute a modification proceeding and has delegated the proceeding to the CALJ. The presiding CALJ shall submit a recommended determination within six (6) months after publication of notice of this Order in the *Federal Register*. Sonos, Google, and OUII are named as parties to the modification proceeding.

The Commission vote for this determination took place on August 8, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Issued: August 9, 2022.

Katherine Hiner,
Acting Secretary to the Commission.

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